

REMARKS

Claims 1-40 and 42-66 were pending in the present application; however, by this Amendment claims 17-38, directed towards a non-elected invention, have been cancelled without prejudice. Thus, upon entry of this Amendment claims 1-16, 39, 40 and 42-66 will remain pending in the present application, of which claims 1-16, 39, 40, 42-61 and 63-65 have been allowed.

To date, no Notice of Draftsperson's Patent Drawing Review has been received. Applicant respectfully requests receipt of this document when it becomes available. Please note that the original drawings filed in the patent application are "formal" drawings.

35 U.S.C. § 112 Rejection

Claims 62 and 66 presently stand rejected under the first paragraph of 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. However, it is respectfully submitted that since a *prima facie* case of failure to comply with the written description requirement has not been established, the present rejection is improper and should be withdrawn.

Specifically, as pointed out in the previous Response filed September 22, 2003, the examiner has the initial burden of presenting evidence or reasoning why a person skilled in the art would not recognize that the written description of the invention provides support for the claims. It is noted that the present Office Action states that "the fact that the term 'somewhat perpendicular to the first hinge' does not appear in the original disclosure is evidence why a person skilled in the art would not recognize that the written description of the invention provides support for the claims." However, it is respectfully pointed out that such a lack of literal support has been held to be insufficient for establishing a *prima facie* case of failure to comply with the written description requirement:

[t]he examiner contends that the rejected claims lack adequate descriptive support because there is "no literal basis for the" claim limitation.... Clearly, the observation of a lack of literal support does not, in and of itself, establish a *prima facie* case for lack of adequate descriptive support under the first paragraph of 35 U.S.C. 112.

[*Ex parte* Parks, 30 USPQ 2d 1234, 1236 (B.P.A.I. 1993)].

Thus, the statement in the Office Action that the term recited in the claim is not literally supported, i.e., by failing to appear in the original disclosure, is insufficient to establish a *prima facie* case of failure to comply with the written description requirement. Therefore, it is respectfully submitted that the present rejection of claims 62 and 66 under the first paragraph of 35 U.S.C. § 112 is improper and should be reconsidered and withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.


This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Application No. 09/491,304
Amendment dated December 8, 2003
Reply to Office Action of October 16, 2003

Any fee required for such Petition for Extension of Time, and any other fee required by this document, other than the issue fee, and not submitted herewith, should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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